

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3148 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHIMANBHAI MANGALBHAI RATHOD

Versus

COMMISSIONER OF LABOUR

Appearance:

MR RC PATHAK for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 21/06/96

ORAL JUDGEMENT

1. Rule. Mr. D.A. Bambhania waives service of rule on behalf of respondents No. 1 and 2. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. The only grievance made by the workman in this petition is that though a demand for Reference of industrial dispute is made to the first respondent within

reasonable time from the date of impugned action, the Reference is not made solely on the ground that there was delay of one year in seeking Reference. The Order is passed by the Office of the Assistant Labour Commissioner on 7th of October, 1995 wherein it is categorically stated that the workman has sought Reference after the expiry of the period of one year from the date of his termination and therefore in absence of any satisfactory reasons for delay in applying for Reference, the case was required to be filed and as and when the reasons for delay will be stated, file will be reopened.

3. It may be stated that the concerned workman is Chimanbhai Maganbhai Rathod who was serving with the second respondent. There was one another employee S.U. Solanki who was also served with similar order by the second respondent and who was also terminated on the date on which the present petitioner was terminated. The said workman also applied for Reference of his dispute under Section 10(1) to the Assistant Labour Commissioner who vide order dated 16th of January, 1995 referred the dispute of the said workman. However, another Assistant Labour Commissioner before whom the case of the present petitioner was put up, refused to make Reference on the ground that there was delay in seeking Reference. The delay of a period of one year is not so unjustifiably long that the Reference could be refused especially when in identical fact situation in the case of another employee who is also terminated vide order of the even date by second respondent, Reference is made by another Assistant Labour Commissioner. In view of the aforesaid, the order passed by the Assistant Labour Commissioner dated 7th of October, 1995 appears to be wholly unjustifiable and not sustainable in law and is hereby quashed and set aside and he is directed to reconsider the case in light of the observation made in this judgment and the workman will be at liberty to give reason as to why he applied for reference after the expiry of the period of one year. Decision on such application shall be taken by the Assistant Labour Commissioner within three months failing which action shall be taken against him personally for contempt of Court by this court. Writ of this order along with the copy of the judgment shall be sent down to the concerned Assistant Labour Commissioner, Ahmedabad Department, Shram Bhavan, Opp: Gun House, Khanpur, Ahmedabad forthwith. Rule is accordingly made absolute. There shall be no order as to costs. Direct service is also permitted.
